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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,875

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EXAMINER

WEATHERBY, ELLSWORTH

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

08/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,875

Applicant(s)

SUMANAWEERA ET AL.

Examiner

Ellsworth Weatherby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/23/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-5, 7-13, and 15-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7, and 12-13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Behren et al. (PGPub. No. 2005/0107704).

Von Behren et al. '704 teaches a method for detecting breathing cycle information with ultrasound, the method comprising: Obtaining ultrasound data acquired over a period of time (abstract); and determining at least a first portion of a cycle as a function of the ultrasound data [0019; 0034]; displaying a cycle waveform overlay comprising the first portion [0019]. Von Behren et al. '704 also teaches that the ultrasound data is responsive to contrast agents [0022]. Von Behren et al. '704 also teaches determining a first portion of a cycle as a function of ultrasound data, I(t) [0025]. Von Behren et al. '704 also teaches determining motion relative to a reference frame of data for corresponding anatomical parts [0010; 0032]. Von Behren et al. '704 further

teaches identifying cyclic parameters for a plurality of spatial locations and matching a sine wave to the variation of values [0024-0025].

Von Behren et al. '704 does not expressly teach that the method is for detecting a breathing cycle information and displaying the breathing cycle waveform. However, the invention of Von Behren et al. '704 would perform equally well for measuring breathing cycle information because cycle information is detected through acoustic intensities [0025]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Von Behren et al. '704 to monitor breathing cycle information to improve the utility of the method.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Behren et al. '704 in view of Jackson et al. (PGPub No. 2005/0096543).

Von Behren et al. '704 teaches all the limitations of the claimed invention except for expressly teaching that the method comprises determining a cost function value as a function of time, the cost function value associated with motion between a plurality of frames of data.

In the same field of endeavor, Jackson et al. '543 teaches determining a cost function value as a function of time, the cost function value associated with motion between a plurality of frames of data [abstract; 0006].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Von Behren et al. '704 with the cost function determination to find the position of a region of interest in a second frame as taught by Jackson et al. '543.

The motivation to modify Von Behren et al. '704 in view of Jackson et al. '543 would have been to determine sufficiently matched data between frames, as taught by Jackson et al. '543 (abstract).

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Behren '704 in view of Sui et al. (PGPub. No. 2005/0203395).

Von Behren '704 teaches all the limitations of the claimed invention except for expressly teaching that the method comprises identifying one of a peak and minimum of the breathing cycle.

In the same field of endeavor Sui et al. '395 teaches identifying one of a peak and minimum of a periodic cycle (claim 21).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Von Behren '704 with the identification of one of a peak and a minimum of the periodic cycle as taught by Sui et al. '395. The motivation to modify Von Behren '704 with Sui et al. '395 would have been to establish reliable frames of reference that correspond to end points in the periodic cycle.

6. Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Behren '704 in view of Jackson (U.S. Patent No. 6,673,017).

Von Behren '704 teaches all the limitations of the claimed invention except for expressly teaching that the method comprises determining the first portion as a function of a first reference frame of ultrasound data and a first subsequent frame of ultrasound

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data and repeating the step of determining the first portion as a function of a first reference frame of ultrasound data and a first subsequent frame of ultrasound data with a second reference frame of ultrasound data associated with the reoccurrence of the first portion.

In the same field of endeavor, Jackson '017 teaches a method that comprises determining the first portion as a function of a first reference frame of ultrasound data and a first subsequent frame of ultrasound data (col. 6, lines 10-13); identifying reoccurrence of the first portion of the breathing cycle (col. 5, lines 53-67); and repeating the step of determining the first portion as a function of a first reference frame of ultrasound data and a first subsequent frame of ultrasound data with a second reference frame of ultrasound data associated with the reoccurrence of the first portion (col. 6, lines 10-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Von Behren '704 with the method for identifying of a portion of a physiological cycle and subsequent reoccurrences of the portion relative to multiple frames of reference as taught by Jackson '017. The motivation to modify Von Behren '704 in view of Jackson '017 would have been to allow the device to use the most current data when predicting physiological cycle movements.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Behren '704 in view of Jackson et al. (U.S. Patent No. 6,193,660) and further in view of Jackson '017.

Von Behren '704 teaches all the limitations of the claimed invention except for expressly teaching repeating determining a first portion of a breathing cycle as a function of the ultrasound data for each cycle of the breathing cycle with a different reference frame for each breathing cycle; and wherein determining a first portion of a breathing cycle as a function of the ultrasound data comprises tracking motion for each breathing cycle as a function of the reference frame for each breathing cycle.

In the same field of endeavor, Jackson et al. '660 teaches tracking motion for each breathing cycle as a function of the reference frame (col. 1, lines 6-10). Jackson et al. '660 also teaches repetitively determining at least a portion of a periodic cycle as a function of the ultrasound data with a different reference frame for each cycle (col. 4, lines. 32-36; col. 7, lines 58-67; col. 8, lines 1-9).

Jackson et al. '660 does not expressly teach that the step of determining at least a first portion of a breathing cycle as a function of the ultrasound data comprises tracking motion for each breathing cycle as a function of the reference frame for each breathing cycle.

In the same field of endeavor, Jackson '017 teaches a method that includes repetitively determining at least a first portion of a physiological cycle as a function of the ultrasound data with a different reference frame for each breathing cycle (col. 6, lines 43-67; col. 7, lines. 1-5). Jackson '017 further teaches a step of determining at least a first portion of a breathing cycle as a function of the ultrasound data that comprises tracking motion for each breathing cycle as a function of the reference frame for each breathing cycle (col. 5, lines 47-49; col. 6, lines 10-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Von Behren '704 in view of Jackson et al. '660 and Jackson '017. The motivation to modify Von Behren '704 in view of Jackson et al. '660 and Jackson '017 would have been to provide a system that would continuously update a reference frame to account for various transducer movements, as well as, allow the system to predict physiological cycle movements based on the current physiological cycle.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Behren '704 in view of Jackson et al. '660 and Jackson '017 as applied to claim 10 above, and further in view of Jago et al. (U.S. Patent No. 6,117,081).

Von Behren '704 in view of Jackson et al. '660 and Jackson '017 teaches all the limitations of the claimed invention except for expressly teaching that the system comprises morphing frames of ultrasound data within each breathing cycle as a function of the reference frame for each breathing cycle.

In the same field of endeavor, Jago et al. '081 teaches a system that comprises morphing frames of ultrasound data within each breathing cycle as a function of the reference frame for each breathing cycle (col. 5, lines 12-33). Here the examiner is interpreting the limitations the claim to be met because Jago et al. '081 teaches warping or morphing frames to match a reference frame (col. 5, lines 12-33).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Jackson et al. '660 in view of Jackson '017 with the frame morphing to a reference frame for the corresponding physiological cycle as taught by Jago et al.

'081. The motivation to modify Jackson et al. '660 in view of Jackson '017 with Jago '081 would have been to allow congruent features to be registered between temporally different frames, as taught by Jago et al. '081 (col. 5, lines 12-33).

9. Claims 16-17 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al '660 in view of Jackson '017.

Jackson et al. '660 teaches a method for detecting a cycle with ultrasound data, the method comprising: tracking motion of a plurality of frames of ultrasound data with respect to a reference frame of ultrasound data (col. 6, lines 57-66); calculating a cyclic parameter as a function of the tracked motion (col. 6, lines 57-65); identifying a portion of the cycle as a function of the cyclic parameter (col. 6, lines 57-62; col. 8, lines 7-9). Jackson et al. '660 also teaches resetting the reference frame of data for each of the plurality of subsequent cycles (col. 6, lines 53-56). Jackson et al. '660 also teaches tracking the motion as a function of a plurality of local regions (col. 7, lines 4-6). Jackson also teaches tracking motion in B-mode frames of data (col. 2, lines 64-66).

Jackson et al. '660 does not expressly teach repeating for *each* of a plurality of subsequent cycles the steps of tracking motion of a plurality of frames of ultrasound data with respect to a reference frame of ultrasound data; calculating a cyclic parameter as a function of the tracked motion for each of the plurality of subsequent cycles and identifying a first portion of the cycle as a function of the cyclic parameter for each of the plurality of subsequent cycles. Jackson et al. '660 also does not expressly teach

resetting the reference frame of data for each of the plurality of subsequent cycles as a first frame of ultrasound data corresponding to the first portion of the cycle.

In the same field of endeavor, Jackson '017 teaches repeating the steps of tracking the motion of a plurality of frames of ultrasound data with respect to a reference frame of ultrasound data (col. 5, lines 47-50); calculating a cyclic parameter as a function of the tracked motion (col. 6, lines 43-49); for a plurality of subsequent cycles (col. 6, lines 43-47). Jackson '017 also teaches resetting the reference frame of data for each of the plurality of subsequent cycles as a first frame of ultrasound data corresponding to the first portion of the cycle (col. 6, lines 10-13). Jackson '017 also teaches identifying the first portion in a breathing cycle (col. 6, lines 10-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Jackson et al. '660 with the method that includes resetting the reference frame of data for each of a plurality of subsequent cycles of Jackson '017. The motivation to modify Jackson et al. '660 with Jackson '017 would have been to provide a system that would update reference frame data to provide motion comparisons that are based on the most recent physiological cycle.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. '660 in view of Jackson '017 as applied to claim 16 above, and further in view of Jackson et al. '543.

Jackson et al. '660 in view of Jackson '017 teaches all the limitations of the claimed invention except for expressly teaching that the system comprises calculating a

cost as a function of an amount of motion of each of the plurality of frames of ultrasound data relative to the reference frame of data.

In the same field of endeavor, Jackson et al. '543 teaches a system comprises calculating a cost as a function of an amount of motion of each of the plurality of frames of ultrasound data relative to the reference frame of data [abstract; 0006].

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Jackson et al. '660 in view of Jackson '017 with the cost function determination to find the position of a region of interest in a second frame as taught by Jackson et al. '543. The motivation to modify Jackson et al. '660 in view of Jackson '017 with Jackson et al. '543 would have been to determine sufficiently matched data between frames, as taught by Jackson et al. '543 (abstract).

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. '660 in view of Jackson '017 as applied to claim 16 above, and further in view of Jago et al. (U.S. Patent No. 6,117,081).

Jackson et al. '660 in view of Jackson '017 teaches all the limitations of the claimed invention, including resetting the reference frame for each corresponding cycle (Jackson '017: col. 6, lines 10-13). Jackson et al. '660 in view of Jackson '017 does not expressly teach that the system further comprises morphing frames of data for each cycle relative to the reset reference frame of data.

In the same field of endeavor, Jago et al. '081 teaches a system that comprises morphing frames of data for each cycle relative to a reference frame (col. 5, lines 12-

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33). Here the examiner is interpreting the limitations the claim to be met because Jago et al. '081 teaches warping or morphing frames to match a reference frame (col. 5, lines 12-33).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Jackson et al. '660 in view of Jackson '017 with the frame morphing to a reference frame for the corresponding physiological cycle as taught by Jago et al. '081. The motivation to modify Jackson et al. '660 in view of Jackson '017 with Jago et al. '081 would have been to provide a clearer image that would avoid the smearing effects due to errors in motion estimation, as taught by Jago et al. '081 (col. 5, lines 12-33).

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellsworth Weatherby whose telephone number is (571) 272-2248. The examiner can normally be reached on M-F 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on (571) 272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EW

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